IN THE

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-764

OTIS BOWEN, GOVERNOR OF THE STATE OF INDIANA; HENRY KOWALCZYK, LAKE COUNTY PROSECUTOR; INDIANA STATE BOARD OF HEALTH: WILLIAM T. PAYNTER, M.D., STATE HEALTH COMMISSIONER AND THE EXECUTIVE OFFICER OF THE INDIANA STATE BOARD OF HEALTH; THEODORE L. SENDAK, ATTORNEY GENERAL OF THE STATE OF INDIANA; THEIR AGENTS, ASSIGNS, SUCCESSORS, REPRESENTATIVES, THOSE ACTING IN CONCERT WITH THEM, AND ALL OTHERS SIMILARLY SITUATED,

Appellants,

vs.

THE GARY-NORTHWEST INDIANA WOMEN'S SERVICES, INC.; WILLIAM R. LEWIS, M.D.; JANE DOE; MARY ROE; BRIGITTE COE; AND ALL OTHERS SIMILARLY SITUATED,

Appellees.

MOTION TO AFFIRM JUDGMENT AND BRIEF IN SUPPORT OF MOTION TO AFFIRM JUDGMENT.

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MOTION TO AFFIRM JUDGMENT.

Come now the Appellees, The Gary-Northwest Indiana Women's Services, Inc., William R. Lewis, M.D.; Jane Doe; Mary Roe; Brigitte Coe; and all others similarly situated, by Julian B. Wilkins, Esq. and W. Henry Walker, Esq., their attorneys, and pursuant to Rule 16(c) of the Rules of the Supreme Court, move this Court to affirm judgment entered September 14, 1976 by the three-judge panel of the United States District Court for the Northern District of Indiana, Hammond

Division, on the grounds that it is manifest that the questions on which the decision of this cause depend are so unsubstantial as not to need further argument in that all questions raised by the Jurisdictional Statement filed by Appellants have been fully disposed of in this Court's decision in *Planned Parenthood of Central Missouri* v. *Danforth,* ..... U. S. .....; 96 S. Ct. 2831 (1976).

The following Brief is submitted in support of this Motion and in opposition to the Jurisdictional Statement filed by Appellants.

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Appellees.

BRIEF IN SUPPORT OF MOTION TO AFFIRM JUDGMENT.

QUESTION PRESENTED.

The Three-Judge District Court decision entered September 14, 1976 is the subject matter of this appeal. It declared un-

constitutional a provision of the Indiana Abortion Law that required that the consent of a parent or other person in *loco parentis* must be obtained before an abortion may be performed on an unmarried woman who is less than 18 years of age. The question is simply whether that conclusion was proper.

ARGUMENT.

This Court decided in *Planned Parenthood of Central Missouri* v. *Danforth*, ... U. S. .....; 96 S. Ct. 2831 (1976) (which case is hereinafter referred to as the *Planned Parenthood* case) that a statute requiring a blanket parental consent must be had before an abortion may be performed on a minor is unconstitutional. The three-Judge District Court in this case applied that decision and invalidated the Indiana statute.

Appellants argue that this case, which involves the laws of Indiana, is factually a different case that the *Planned Parenthood* case, which involved the laws of Missouri, for the reason that Indiana, unlike Missouri, in addition to the parental consent provisions in the abortion statute, also had a general statute requiring parental consent for surgical procedures on minors. Appellants also argue that this Court in the *Planned Parenthood* decision overlooked considerations relating to the special position given to minors and other incompetents by the law generally, and that upon reconsideration this Court should modify its own position taken in the *Planned Parenthood* case.

It is the thrust of this Brief that these two positions asserted by Appellants are clearly incorrect and are clearly insubstantial

Appellants assert that it was noted in the *Planned Parenthood* decision that no other Missouri statute required the additional consent of a minor's parent for medical and surgical treatment, whereas, by contrast, Indiana does have such a statute. It is true that this Court in its decision did allude to the argument made to it that there was no other specific Missouri statute relating to parental consent as to medical procedures. But the

Court also alluded to the argument made to it that there was a long list of situations dealing with the conduct of minors which by Missouri law did require parental consent. The difference asserted by Appellants, therefore, is a difference without a distinction. Both Missouri and Indiana have significant statutory patterns that restrict actions by minors and require parental consent.

This Court in *Planned Parenthood* was dealing with a basic constitutional requirement. While recognizing that a State may have broader authority to regulate the activities of children than of adults, this Court went on to say that "it remains, then, to examine whether there is any significant state interest in conditioning an abortion on the consent of the parent . . . that is not present in the case of an adult." This Court then concluded that "any independent interest the parent may have in the termination of the minor daughter's pregnancy is no more weighty than the right of privacy of the competent minor . . ." (96 S. Ct. 2831 at 2843-4).

Appellants also urge a general reappraisal of the basic considerations on the *Planned Parenthood* case in the light of alleged differences between the rights of a "woman" and the rights of "children" and of other classes of people treated by the law as incompetent for one reason or another. Indeed, Appellants assert that there are "startling" implications to the *Planned Parenthood* decision as it relates to the mentally ill, the insane, the alcoholic and the drug addict, and that this Court in its decision has suggested that *any* minor is competent to make the abortion decision.

The difficulty with the position of Appellants is that it directly ignores what this Court said explicitly in the *Planned Parenthood* decision:

> "We emphasize that our holding that Section 3(4) is invalid *does not suggest that every minor, regardless of age or maturity, may give effective consent* for termination of her pregnancy. See Bellotti v. Baird post. The fault with

> Section 3(4) is that it imposes a special consent provision, exercisable by a person other than the woman and the physician, as prerequisite to a minor's termination of her pregnancy and does so without a sufficient justification for the restriction." (emphasis added) (96 S. Ct. 2831 at 2844.)

The Missouri statute that was being considered in *Planned Parenthood* provided baldly that with respect to minors, a written consent of a parent is required. The Indiana statute that is being considered in this case, provides baldly that as to unmarried minors, the consent must be joined in by a parent. *Planned Parenthood* has held that such a statute is too broad and is unconstitutional. It is respectfully urged that the Indiana statute clearly suffers from the same defect and that it is unconstitutional.

Whether in another case, or with respect to another kind of statute, this Court would wish to review or to refine matters relating to minors and the abortion decision, is not raised by the record of this case.

CONCLUSION.

Appellees respectfully urge this Court to grant their Motion to affirm the judgment of the three-Judge District Court.

Respectfully submitted,

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